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DAVID J. KILLIAN, ANTHONY M. MAROTTA,  
and ROSA COURT, LLC

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

VINCENT KAMYAR VAGHAR,  
Plaintiff,

v.

DAVID J. KILLIAN; ANTHONY M.  
MAROTTA; and ROSA COURT, LLC, a  
New Jersey limited liability company,  
Defendants.

Case No. C 07 4083 MMC

**SUPPLEMENTAL DECLARATION OF  
DAVID J. KILLIAN AS CO-MANAGING  
MEMBER OF ROSA COURT, LLC IN  
SUPPORT OF MOTION TO DISMISS  
SECOND AMENDED COMPLAINT OF  
PLAINTIFF VINCENT KAMYAR  
VAGHAR OR, IN THE ALTERNATIVE,  
TO TRANSFER VENUE**

Date: November 16, 2007  
Time: 9:00 a.m.  
Judge: Honorable Maxine M. Chesney  
Courtroom: 7

I, David J. Killian, declare:

1. I am an adult individual over eighteen years of age and a co-managing member of defendant Rosa Court, LLC ("Rosa"). I make this supplemental declaration in support of Defendants' Motion to Dismiss the Second Amended Complaint (the "Second Amended Complaint") of Plaintiff Vincent Kamyar Vaghar ("Vaghar") or, in the Alternative, to Transfer Venue of this matter to the Eastern District of Pennsylvania.

2. I have reviewed the declaration of Vincent Kamyar Vaghar dated

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1 October 26, 2007 in this matter (the "Vaghar Declaration") and submit this supplemental  
 2 declaration in response to the assertions set forth therein. I also have personal knowledge  
 3 of the matters stated in this supplemental declaration and could and would competently  
 4 testify thereto if called upon as a witness at trial or any other proceeding in this matter.

5 **A. All of the Necessary Third-Party Fact Witnesses and their**  
 6 **Employers Are Located in Pennsylvania and New Jersey**

7 3. Although not mentioned in Vaghar's Second Amended Complaint  
 8 or the associated Vaghar Declaration, Vaghar is aware that Rosa, as well as Mr. Marotta  
 9 and myself, intend to assert compulsory counterclaims against him in this matter that arise  
 10 directly from his conduct with us and numerous other individuals and business entities  
 11 who reside or are located within the Commonwealth of Pennsylvania and the State of New  
 12 Jersey.

13 4. The claims mentioned above will be predicated upon, among other  
 14 things, Vaghar's willful breach of contract and joint venture agreement with the  
 15 Defendants, as well as claims sounding in promissory estoppel and fraud in the  
 16 inducement.

17 5. As set forth in Rosa's initial declaration dated October 5, 2007, as  
 18 well as the declarations submitted by Mr. Marotta and me (in our individual capacities) on  
 19 that date as well, none of the Defendants have had any purposeful connection with the  
 20 State of California except as specifically set forth therein.

21 6. As previously stated in Defendants' October 5, 2007 Declarations,  
 22 Rosa is a single purpose entity whose only business activities relate to the ownership and  
 23 development of the real estate project referred to in Exhibit "A" of the Second Amended  
 24 Complaint (at paragraph "C") -- at the "*intersections of Federal and Juniper Streets and*  
 25 *Federal and Clarion Streets in Philadelphia*" -- where the underlying dispute involving  
 26 the Defendants' alleged duty to convey a condominium to Vaghar pursuant to the  
 27 Agreement for Settlement of Debt (the "Agreement") is physically located (the "Project").

7. Aside from Rosa's activities at the Project, Rosa has no other business offices, assets or business operations anywhere other than in the Commonwealth of Pennsylvania (and, in particular, in the county of Philadelphia) and its administrative office located in New Jersey.

8. In addition, all of the necessary third party fact witnesses who possess first hand knowledge about the claims referred to above (and in Vaghar's Second Amended Complaint) either reside, are located, or conduct business only in Pennsylvania or New Jersey.

9. In addition, the business entities that will be subpoenaed to produce business records in this matter are all physically located in Philadelphia, Pennsylvania (primarily) and in Southern New Jersey (both of which are within the Eastern District of Pennsylvania's direct subpoena power).

#### **B. The Third Party Fact Witnesses**

10. The following individuals have direct knowledge of the facts supporting the above referenced claims. Thus, Defendants will be required to compel the appearance of, among others, at least the following individuals to provide testimony and produce documents at trial (or during various other pre-trial stages of this proceeding) in support of our counter claims in this matter:

- **Vincent S. Mancini, A.I.A.**  
Landmark Professional Design, Inc.  
1324 Locust Street, Suite 101  
Philadelphia, PA 19107
- **Michael Mullen**  
CB Richard Ellis, Brokerage Services  
1800 John F. Kennedy Boulevard, 10<sup>th</sup> Floor  
Philadelphia, PA 19103
- **Patrick J. Duffy**  
Principal, Chatham Bay Group  
220 West Rittenhouse Square  
Philadelphia, PA 19103

- Nancy Andreleczyk  
Office Manager and Custodian of Records  
AnMar Management  
901 Route 168, Suite 110  
Turnersville, NJ 08012

11. Mr. Mancini is the Rosa Project's Pennsylvania Licensed Architect who has first hand knowledge of Vaghar's direct role and involvement in the Project and resulting exposure to Defendants on our counterclaims. Mr. Mancini is a Pennsylvania resident. Landmark Professional Design, Inc. is a Pennsylvania based architectural firm.

12. Mr. Mullen is the Philadelphia based Real Estate Broker with CB Richard Ellis that assisted Vaghar (along with Mr. Marotta and me) with our joint venture to pursue a real estate investment at the additional Pennsylvania site referred to by Vaghar as the project at "12<sup>th</sup> & Jackson St. in Philadelphia." (*See* paragraph 10 of the Vaghar Declaration.) Mr. Mullen has first hand knowledge of Vaghar's direct role in that project and his resulting exposure to us on our counterclaims against him. Mr. Mullen is, upon information and belief, a resident of Pennsylvania and CB Richard Ellis is a Pennsylvania licensed real estate brokerage firm.

13. Mr. Duffy and his Philadelphia based consulting firm Chatham Bay Group served as the project consultant to Rosa and have direct knowledge of, among other things, Vaghar's repeated attempts to initiate a business relationship with the Defendants in Pennsylvania and his breach of the parties' joint venture agreement in this matter. Mr. Duffy also has first hand knowledge of Vaghar's direct role in the Rosa project and resulting exposure to the Defendants on their counterclaims. Mr. Duffy is a resident of Pennsylvania and the Chatham Bay Group is a Pennsylvania entity formed and domiciled in Pennsylvania.

14. Ms. Andreleczyk is the office manager and custodian of records for AnMar Management and has direct knowledge of Vaghar's repeated attempts to initiate a business relationship with the Defendants in Pennsylvania, as well as the facts supporting Defendants' counterclaims against Vaghar in this matter. Ms. Andreleczyk is a resident

1 of the State of New Jersey. AnMar Management is a New Jersey based entity that  
2 conducts business only in Pennsylvania and New Jersey.

3 **C. Vaghar Overstates the Parties' Actual Agreement:**

4 15. In paragraph 14 of the Vaghar Declaration, Vaghar contends that:

5 "Before entering into the Agreement I [Vaghar] specifically  
6 discussed with Killian and Marotta that any dispute would be  
7 governed by California law and heard in a court venued in  
8 California. Killian and Marotta both consented to this agreement  
9 verbally and over email, as evidenced from Marotta (Killian was  
10 copied on the email) dated October 19, 2006."

11 16. Despite Vaghar's conclusory assertions to the contrary, all of our  
12 discussions on this subject with respect to the Agreement were confined to his preference  
13 over which particular state's law (*e.g.*, Pennsylvania or California) would apply to any  
14 dispute between us.

15 17. I also wish to point out that Rosa and I never sought the advice of a  
16 lawyer to review the new documents appended to the Vaghar Declaration before we  
17 physically signed them in Philadelphia, Pennsylvania. Had I known that Vaghar would  
18 seek to re-write the terms of our actual agreement with him, I would have retained a  
19 lawyer to make sure that the Agreement clearly reflected all aspects of what Vaghar and  
20 the Defendants agreed upon on this issue.

21 18. Neither I, nor to my knowledge Anthony Marotta (either in his  
22 individual or representative capacity for Rosa Court, LLC) ever agreed to defend or  
23 otherwise litigate a dispute involving the Agreement with Vaghar in the State of  
24 California. That is precisely why we asked him to have his lawyers prepare a document  
25 (namely, the Agreement) that would supercede the personal guarantees to which he now  
26 claims require us to travel to California to litigate this matter.

27 19. In addition, until reviewing the Vaghar Declaration, I have neither  
28 heard of nor used the term "venued" or "forum" in connection with my dealings with

Vaghar. Rather, the document to which he admits was replaced by the Agreement at issue

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1 herein actually uses the term "settled" when referring to "disputes, differences or  
2 questions" between us that would have involved arbitration in the State of California.  
3 (Again, as Vaghar himself even concedes, that document was voided by our subsequent  
4 Agreement.)

5           20. In any event, Vaghar well knows that the Defendants have not yet  
6 formally responded to the Arbitration that he initiated in Los Angeles. When we do, we  
7 have advised him that we intend to challenge his assertion that we are required to arbitrate  
8 all of the claims set forth therein in California.

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1 Executed this 1<sup>st</sup> day of November 2007, in the Commonwealth of Pennsylvania,  
2 County of Philadelphia.

3 I declare under penalty of perjury under the laws of the United States that the  
4 foregoing is true and correct.  
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8 David J. Killian  
9 Co-Managing Member  
10 of Rosa Court, LLC  
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SUPPLEMENTAL DECLARATION OF DAVID J. KILLIAN AS CO-MANAGING MEMBER OF ROSA COURT, LLC IN  
SUPPORT OF MOTION TO DISMISS SECOND AMENDED COMPLAINT OR, IN THE ALTERNATIVE, TO TRANSFER  
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